9th April 2024

Committee Secretary
Senate Standing Committees on Environment and Communications
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Parliament House
Canberra ACT 2600

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RE: Inquiry into Australia's extinction crisis

Thank you for this opportunity to make a submission to the Senate Environment and Communications References Committee's inquiry into Australia's extinction crisis.

I am a Senior Lecturer based at the University of New South Wales, Canberra, with expertise in biodiversity conservation and environmental policy. I am actively engaged in the government's Nature Positive law reform agenda and was one of five independent academic experts who participated in in Professor Graeme Samuel AC's Consultative Group as part of the Independent Review of the *EPBC Act 1999* in 2020.

I provide these comments below as an individual.

1) The Australian Government's implementation of the recommendations of the Independent Review of the EPBC Act undertaken by Professor Graeme Samuel

I am deeply concerned with the lack of progress made by the Australian Government in implementing the Samuel Review recommendations. After forming government in May 2022, the Australian Government did not formally respond to Professor Samuel's recommendations until December 2023 (via the Nature Positive Plan, discussed below).

It is my view that Australian Government's response to the Samuel review recommendations has been a slow-moving disaster. The only amendment to the EPBC Act that the government has progressed so far is the expanded water trigger.

Professor Samuel envisaged comprehensive amendments to be made to the EPBC Act within 12 months, and for legislative reform of the EPBC Act to be finalised by 2022[1]. The Australian government only commenced its consultation on EPBC reform in May 2023[2] – 12 months after forming government - its "lockup" consultation with a selection of peak bodies in October 2023[3], and its public consultation in November 2023[4]. At this rate, we are unlikely to see a draft Bill presented to Parliament until mid-2024, with passage not guaranteed by end of 2024.

In the meantime, the EPBC Act continues to fail to prevent extinctions, and the Australian government continues to approve developments under the Act that contribute to extinctions. It's worth remembering that the Safeguard Mechanism doesn't even function properly until EPBC amendments have been passed[5].

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[1] Samuel, G. 2020. Independent Review of the EPBC Act – Final Report. Department of Agriculture, Water and the Environment. Pg 194.
[2] Draft National Environmental Standard for Matters of National Environmental Significance https://consult.dcceew.gov.au/draft-nes-for-mnes
[3] Mizen, R., & Greber, J. (2023, October 31). 'Unusual' briefings signal looming brawl on Labor nature law overhaul. Australian Financial Review. https://www.afr.com/politics/federal/unusual-briefings-signal-looming-brawl-on-labor-nature-law-overhaul-20231030-p5eg7a
[4] Australia's new Nature Positive laws: public webinars https://www.dcceew.gov.au/about/news/australias-new-nature-positive-laws-public-webinars
[5] Medlock, F. (2023, April 6). Safeguard Mechanism reforms—Another significant step in Australia's climate law renaissance. Environmental Defenders Office. https://www.edo.org.au/2023/04/06/safeguard-mechanism-reforms-another-significant-step-in-australias-climate-law-renaissance/

It is distressing and disappointing that the Australian government has been so slow to implement the Samuel review recommendations. A global "summit" is being organised, various committees have been established[6], and stakeholders have been stuck in an endless cycle of consultations, yet little of any substance has been implemented to date.

The Nature Repair scheme, legislated at the end of 2023, can't function until methods are developed. There is still no certainty over private demand for such voluntary certificates, and projects can't commence without start-up funding, which the Australian government has never committed to providing[7].

The Kunming-Montreal Global Biodiversity Framework, which Australia is a signatory to, **requires biodiversity loss to be close to zero by 2030**, and for the "abundance of native wild species is increased to healthy and resilient levels" by 2050[8]. The Australian government's (lack of) response to date has not just been woefully inadequate, but has actively facilitated extinction.

2) The Nature Positive Plan

Of most relevance to this Inquiry is the Nature Positive Plan's explicit focus on delivering *"better overall environmental outcomes".* Despite the positive sound, what this means is that the "like for like" requirement – whereby impacts to Species A must be compensated by improvements for Species A – is being removed. This means that offsets (or financial contributions contributed by developers in lieu of offsets) are no longer required to benefit the specific Matters of National Environmental Significance that are impacted by development losses:

> *"Investments would **not** be required to be 'like for like' if this would not result in the best overall environmental outcome."*
> Pg. 21, Nature Positive Plan, emphasis added.

The Nature Positive Plan explicitly seeks to allow the accumulation of losses of some species and ecosystems in exchange for benefits to others. Removal of "like for like" principle is a **major step backwards from best practice**. **"*Better overall*" is a euphemism for extinction.**

Who decides what is "better overall", and how? In other words, who decides which species and ecosystems go extinct? Based on the EPBC reform consultation documents so far[9], we now know that a statutory office holder (the Restoration Contributions Holder) and a committee (Restoration Contributions Committee) will be making these decisions, 3 years after the impacts to MNES are approved and it is determined that suitable "like for like" offsets (restoration actions) cannot be identified.

There are three main ecological reasons why suitable "like for like" offsets cannot be identified for a threatened species or community[10]:

1. The MNES is highly threatened – there is genuinely little to no habitat or suitable sites remaining (that aren't already under protection).

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[6] Plibersek, T. (2023a, December 4). New advisory group to boost funding to repair and protect nature | Ministers. https://minister.dcceew.gov.au/plibersek/media-releases/new-advisory-group-boost-funding-repair-and-protect-nature
Plibersek, T. (2023b, December 17). Australia to host global Nature Positive Summit | Ministers. https://minister.dcceew.gov.au/plibersek/media-releases/australia-host-global-nature-positive-summit

[7] Evans, MC. 2023. Submission to the Senate Standing Committees on Environment and Communications inquiry into the Nature Repair Market Bill 2023 and Nature Repair Market (Consequential Amendments) Bill 2023 [Provisions]. Submission 36.

[8] Convention on Biological Diversity. (2022, December 22). COP15: Final text of Kunming-Montreal Global Biodiversity Framework. Convention on Biological Diversity. https://www.cbd.int/article/cop15-final-text-kunming-montreal-gbf-221222

[9] See especially the February consultation documents https://consult.dcceew.gov.au/australias-new-nature-positive-laws

[10] Maron, M., Evans, M. C., Mayfield, H., & Dutson, G. (2022). Guidance for determining the availability or scarcity of environmental offsets under the EPBC Act 1999 (p. 35) [Report to the Department of Agriculture, Water and the Environment].

2. Current knowledge cannot inform how to deliver measurable benefits to the MNES with a sufficient degree of confidence.
3. Restoration is slow, thus residual impacts cannot be feasibly compensated for within an ecologically relevant timeframe.

In each of these three cases, compensation/offsets/restoration actions are not ecologically feasible. To prevent extinction of these MNES, impacts should be avoided and minimised further, and if that is not possible, the impact should not be approved.

It is a well-known principle within environmental impact assessment that offsets are not feasible or appropriate in all circumstances[11], yet the Australian Government continues to implement policy on the basis that *"you can always offset something"*[12]. Indeed, the Nature Positive Plan explicitly enables a "workaround" so that such impacts can be approved, and a so-called "better overall" environmental outcome is delivered.

Ultimately, this is a **policy regression** that exploits the term "nature positive"[13] to obfuscate and actively facilitate the likely extinction of already highly threatened Australian species and ecosystems.

3) The ongoing consultation process on draft EPBC legislation

I have provided extensive feedback on the documents provided in the four "lock-up" style consultation that the Australian government has run since October 2023[14].

My general sense is that the proposed Nature Positive (Environment) Bill contains largely a moving around and renaming of components of the EPBC Act, rather than substantive reform. **At best, I anticipate the new legislation to maintain existing trends of biodiversity loss and extinction**. At worst, I think there is significant scope for outcomes that are worse than what we see now under the EPBC Act – primarily due to the weakening of "like for like" outcomes as discussed above.

For the sake of brevity, I will highlight just one key issue here.

The goal of the draft "Nature Positive" Bill is inconsistent with the international definition of "nature positive".

Nature positive actually has a very specific meaning:

> *"…halt and reverse nature loss **measured from a baseline of 2020**, through increasing the health, abundance, diversity and resilience of species, populations and ecosystems **so that by 2030 nature** is visibly and measurably on the path of recovery".*
> www.naturepositive.org, emphasis added

This is a simple definition, but it is SMART (specific, measurable, achievable, relevant, time-bound). It enables progress to be measured and evaluated. If 2020 doesn't work, pick another year – the simple fact that there is a baseline, matters. There is a clear timeline for action and evaluation. Similar to Net Zero, which has very clear time-bound targets for climate action, it is clear that biodiversity loss must be halted by 2030 and on track to biodiversity absolute net gain by 2050.

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[11] Pilgrim, J. D., Brownlie, S., Ekstrom, J. M. M., Gardner, T. A., von Hase, A., Kate, K. ten, Savy, C. E., Stephens, R. T. T., Temple, H. J., Treweek, J., Ussher, G. T., & Ward, G. (2013). A process for assessing the offsetability of biodiversity impacts. Conservation Letters, 6(5), 376–384. https://doi.org/10.1111/conl.12002

[12] Evans, M. C. (2023). Backloading to extinction: Coping with values conflict in the administration of Australia's federal biodiversity offset policy. Australian Journal of Public Administration, 82(2), 228–247. https://doi.org/10.1111/1467-8500.12581. Pg 9, interviewee 14

[13] Maron, M., Quétier, F., Sarmiento, M., ten Kate, K., Evans, M. C., Bull, J. W., Jones, J. P. G., zu Ermgassen, S. O. S. E., Milner-Gulland, E. J., Brownlie, S., Treweek, J., & von Hase, A. (2023). 'Nature positive' must incorporate, not undermine, the mitigation hierarchy. Nature Ecology & Evolution, 1–4. https://doi.org/10.1038/s41559-023-02199-2

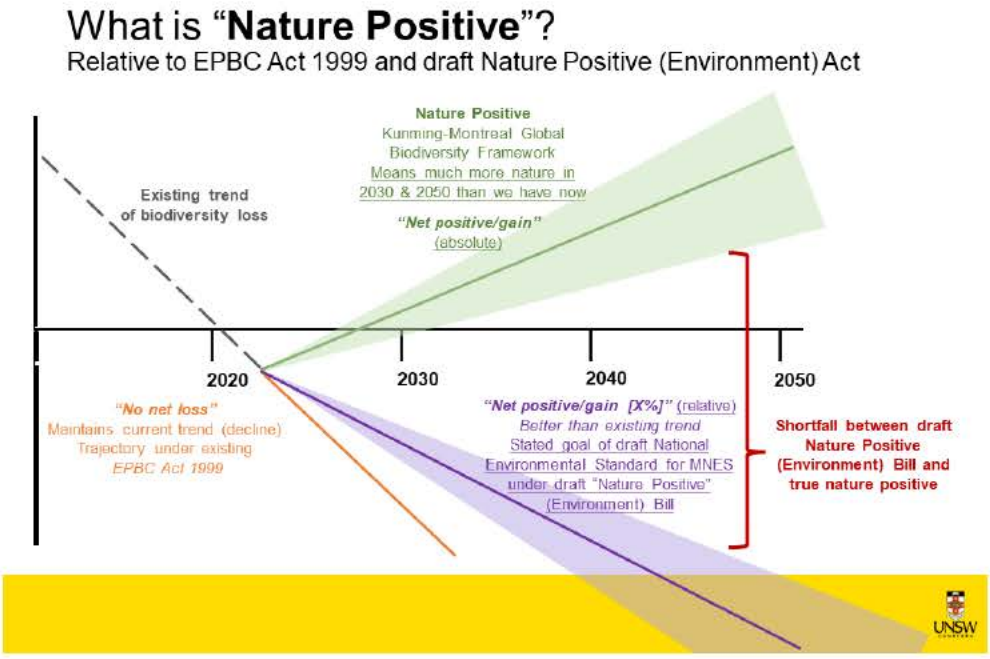
[14] I have attended consultation sessions run by the Nature Positive Taskforce as a guest of The Wilderness Society. The invitation to attend the "lock-up" consultation was not extended to independent academic experts. My comments in this submission and those I have provided to the Taskforce to date have not been endorsed by and are not necessarily representative of The Wilderness Society.

Yet the Australian government has chosen to remove the baseline and target years, resulting in a vague definition that can neither be measured nor evaluated:

> *"Nature positive is a term used to describe circumstances where nature – species and ecosystems – is being repaired and is regenerating rather than being in decline."*
> Pg. 1, Nature Positive Plan

In the March lock-up consultation, a definition of nature positive was provided in the draft Bill text, that was slightly different to the above, but crucially still omits baseline and target years. A proposed object of the Bill is to *"contribute to a Nature Positive Australia"*[15].

The disparity between what "nature positive" actually is, versus what the so-called Nature Positive (Environment) Bill seeks to deliver, is illustrated below. Note that the "X%" of relative gain has yet to be determined by government.



To be clear – the Australian government is seeking to introduce a "Nature Positive" bill, that is inconsistent with the international definition of nature positive. It is akin to introducing a Net Zero bill, with an objective to "contribute to outcomes for Australia that are net zero". No one would take that seriously, and so no one should take this instance seriously either.

Unless the "like for like" requirements are fully reinstated, and clear and unambiguous limits are set on impacts to MNES (via no-go zones, circumstances or MNES where offsets are not feasible), the "Nature Positive" (Environment) Bill will contribute to, rather than address Australia's extinction crisis.

I welcome the opportunity to provide any further assistance or input going forward.

Yours sincerely,

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[15] See the "Objects/principles of the new Act" discussion paper in the February consultation package https://consult.dcceew.gov.au/australias-new-nature-positive-laws